

REMARKS/ARGUMENTS

The Office Action mailed July 31, 2007 has been received and its content carefully considered. Reconsideration and withdrawal of the outstanding rejections are respectfully requested in view of the foregoing amendments and the following remarks.

Without conceding the propriety of the rejections under 35 U.S.C. § 103(a), the independent claim 1 has been amended and dependent claim 6 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Specific support for the amendments is to be found, at least, in Figure 4 and paragraphs 37 to 50 of the Specification.

REJECTIONS UNDER 35 U.S.C. § 103(a) (U.S. Patent No. 6,029,798 to Michael Miller in view of U.S. Patent No. 5,624,162 to Kuno Guse et al)

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as being anticipated by U.S. Patent No. 6,029,798 to Michael Miller (Hereinafter referred to as, "Miller") in view of U.S. Patent No. 5,624,162 to Kuno Guse et al (Hereinafter referred to as, "Guse"). Claim 6 has been cancelled. The Applicants respectfully submit that the amendments made to claim 1 obviates this rejection and thus, respectfully request reconsideration and withdrawal of the rejection to claims 1 to 5 and 7.

Miller is directed to a device that detects a jam in a chain. This device includes a series of rollers and rollers with pressure sensors arrayed along the chain. These rollers are positioned to introduce a "zig-zag" pattern in the chain. If a jam occurs, the tension on the chain and therefore the force exerted on the rollers increases in the downstream segment of chain between the drive sprocket and the jam. Correspondingly, tension is decreased in the upstream segment of the chain between the drive sprocket and the jam. Therefore, by identifying the last taught

segment of the chain, it can be determined that the jam is in the next segment of the chain.

Accordingly, the Miller device is not a tension evaluator but rather is a jam detector. As such, the Miller device does not include actuators to exert a load on the chain. Instead, the deflectors or rollers are static. *See FIGS. 2 and 3, and Column 5 lines 45-60.* Pointedly, Miller fails to disclose an actuator configured to pre-tensioning the chain, an actuator to apply a lesser force to test the tension, and a sensor to measure the chain travel between the test load and loss of contact. In fact, pre-tensioning the chain prior to testing would defeat the intent of Miller.

Miller requires a measurable tension distinction in front of and behind the jam. If the chain is pre-tensioned to equalize the tension in the chain, the Miller device would fail to operate. Thus, Miller teaches away from pre-tensioning a chain and is therefore precluded from use as a reference. *See M.P.E.P. 2145(D)(2).*

In contract newly amended claim 1 recites, *inter alia*, an actuator to apply a first load and a second load to a chain, the first load being configured to pre-load the chain, the second load being configured to evaluated tension in the chain, the chain being moved a first amount of deflection in response to the first load and the chain being moved a second amount of deflection in response to the second load, a first sensor to sense an event, the event comprising loss of contact with the chain, wherein a third amount of deflection is associated with the event, and a second sensor to sense an amount of travel of the chain between the second amount of deflection and the third amount of deflection.

Even if Miller was a valid reference, which it is not, Guse fails to make up for the deficiencies of Miller. Guse is directed to maintaining a set amount of sag in the chain of a mining machine. In this regard, Guse discloses a row of proximity sensors that sense the chain passing in front of them. If the mining machine is working properly, only the top-most sensor is

able to detect the chain. *See Column 3 lines 24-38.* If excess sag occurs, the chain will sag lower and lower sensors will detect the chain. *See Id.* To reduce the excess sag, a tensioning device may be controlled to restore the suitable amount of sag. Importantly, the chain is not “pre-tensioned.” Pre-tensioning implies an equalization of the tension throughout the continuous chain. Guse does not disclose this equalization process. The distinction is that Guse is concerned with the length of chain and the degree to which the chain sags at particular portions of the mining machine. If excess sag develops, that excess is removed by the tensioning device as shown in FIG. 4. In addition, Guse fails to disclose an actuator to apply a lesser force to test the tension and a sensor to measure the chain travel between the test load and loss of contact. t invention is patentably distinct from the grinding device of the Whitsett document.

In view of the foregoing, withdrawal of the 35 U.S.C. § 103(a) rejection to claims 1-5 and 7 as being anticipated by Miller in view of Guse is respectfully requested.


CONCLUSION

In view of the foregoing, reconsideration and allowance of this application is believed in order and such action is earnestly solicited. Should the Examiner believe that a telephone conference would facilitate examination of the application, the Examiner is respectfully invited to telephone the undersigned at (202) 861-1629.

In the event this paper is not timely filed, the Applicants petition for an appropriate extension of time. Please charge any fee deficiencies or credit any overpayments to Deposit Account No. 50-2036.

Respectfully submitted,

Baker & Hostetler LLP

By: 
Michael D. Graham
Reg. No. 51,750

Date: 12/13/2007
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304
Telephone: 202-861-1500
Facsimile: 202-861-1783